

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 25 July 2022

Public Authority: Stockport Metropolitan Borough Council
Address: Town Hall
Edward Street
Stockport
Cheshire
SK1 3XE

Decision (including any steps ordered)

1. The complainant has requested from Stockport Metropolitan Borough Council ('the Council') copies of communications between a named councillor and other councillors and council staff. The Council refused the request, citing regulation 12(4)(b) (Manifestly unreasonable request) of the EIR.
2. The Commissioner's decision is that the Council was entitled to apply regulation 12(4)(b) of the EIR to refuse the request. However, by failing to conduct an internal review of its decision within the required timescale, the Council breached regulation 11(4) of the EIR.
3. The Commissioner requires no steps as a result of this decision.

Background

4. Prior to making the request under consideration here, the complainant corresponded with the Council regarding its decision to temporarily reduce the frequency of garden waste bin collections during the Covid-19 pandemic. She was dissatisfied with the explanation she received for its decision and she made a formal complaint about the conduct of a named councillor with whom she had corresponded. The complaint was considered under the Council's corporate complaints procedure and also

under its Code of Conduct for Members. As part of that process, the complainant was given a detailed account of the reasons for the temporary changes to bin collections and a timeline of the decision making. In neither case was the complaint upheld.

Request and response

5. On 21 May 2021, the complainant wrote to the Council and requested information in the following terms:

"I contacted Councillor [name redacted] in September last year. She did not answer all my questions and passed them to council staff. Please let me have copies of all e-mails, notes of meetings, calls etc in connection with this matter made to council staff and other councillors.

She has advised me that she did not answer my questions truthfully as she was provided incorrect information by council staff. Please let me have copies of this."

6. The Council responded to the request on 28 May 2021. It refused the request on the grounds that regulation 12(4)(b) (Manifestly unreasonable request) of the EIR applied.
7. The complainant requested an internal review of the Council's response to the request on 17 June 2021. The Council responded on 1 September 2021. It upheld its decision to refuse the request, for the reasons given in its email of 28 May 2021.

Scope of the case

8. The complainant contacted the Commissioner on 1 September 2021 to complain about the way her request for information had been handled.
9. The analysis below considers whether the Council was entitled to rely on regulation 12(4)(b) of the EIR to refuse to comply with the request for information.
10. The Commissioner has also considered the Council's delay in providing the internal review under regulation 11 (Representations and reconsideration) of the EIR.

Reasons for decision

Is the information environmental information?

11. Requests for 'environmental information' must be considered under the terms of the EIR, rather than under FOIA. Regulation 2(1)(c) of the EIR defines environmental information as any information on:

"measures (including administrative measures) such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in [regulation 2(1)](a) and (b) as well as measures or activities designed to protect those elements."
12. The request in this case was for internal communications which relate to the Council's arrangements for garden waste collections. The Commissioner is satisfied that the request was for information on a measure, or measures, likely to affect the state of soil and land (regulation 2(1)(a)). It was also information on factors (regulation 2(1)(b)) likely to affect the state of soil and land. The Commissioner therefore considers that the request fell to be dealt with under the EIR.

Regulation 12(4)(b) – manifestly unreasonable request

13. Regulation 12(4)(b) of the EIR provides that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.
14. The Commissioner considers that a request can be manifestly unreasonable either if the request is vexatious, or where compliance with the request would incur a manifestly unreasonable burden on the public authority both in terms of costs and the diversion of resources.
15. In its submissions to the Commissioner, the Council has relied upon the former interpretation of regulation 12(4)(b); that it considers the request to be vexatious.
16. The Commissioner's guidance on regulation 12(4)(b)¹ states that public authorities should refer to his guidance on vexatious requests under section 14 of FOIA when considering whether a request for

¹ <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>

environmental information is manifestly unreasonable on the grounds that it is vexatious.

17. In his published guidance on dealing with vexatious requests², the Commissioner considers the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
18. In that respect, his guidance advises public authorities that:

“A useful starting point is to assess the value or purpose of the request before you look at the impact handling the request would have on you”.
19. The emphasis on protecting public authorities’ resources from unreasonable requests was acknowledged by the Upper Tribunal in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (ACC), (28 January 2013).
20. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues:
 - (1) the burden imposed by the request (on the public authority and its staff);
 - (2) the motive of the requester;
 - (3) the value or serious purpose of the request; and,
 - (4) harassment or distress of and to staff.
21. The Upper Tribunal did, however, caution that these considerations were not meant to be exhaustive. It emphasised that:

“...all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA” (paragraph 82).

² <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/>

The complainant's position

22. The complainant objected to her request being labelled as 'manifestly unreasonable' and opined that the Council could provide her with the requested information "...within days". She believed the Council was using regulation 12(4)(b) to avoid corresponding with her about legitimate concerns she held about the service it was providing and the conduct of councillors and staff.

The Council's position

23. The Council saw the request as the latest in a long line of correspondence it had engaged in with the complainant stemming from the temporary change to green bin collections. It said that the central part of her discontent (regarding information she had been given by the councillor about the garden waste policy) had twice been considered under its formal complaints procedures and dismissed. It said that her request for information was an attempt to reopen these matters, when it was entitled to consider them concluded.

24. Setting out the background to the matter, it said:

"Our decision to refuse the request referenced above...has been made following a long series of correspondence between [the complainant] and Stockport Metropolitan Borough Council which we consider to be unreasonably persistent in nature.

The request referenced was received following the decision to take no further action with regards to a complaint lodged by [the complainant]...She was referred to the ombudsman...should she wish to take the matter further as she has exhausted the council's corporate complaints procedure. It is the council's position that following that decision, this request is intended to continue to disrupt council business regarding a subject which has already received a huge allocation of time and resources, and therefore is considered manifestly unreasonable under regulation 12(4)(b) of the EIR."

25. It continued:

"Requesting access to this documentation is considered to be a way of extending an already exhausted process and the council do not believe that, on balance, time spent harvesting and disclosing the information would be in the public interest. The council consider that the only use for this information requested would be to continue to dispute the requestors [sic] case, which is closed. This is therefore considered by [the Council] to be misuse of the EIR and as previously mentioned, bears little to no benefit to the wider public."

26. As regards the burden of compliance, it said:

"It is the council's position that [the complainant's] concerns have already been dealt with under the corporate complaints procedure and have been separately formally considered by the Deputy Monitoring Officer. Neither complaint was upheld.

There has been extensive correspondence between the requestor and Senior Officers in the Council, in fact senior members of the Legal Team have spent in excess of 60 hours on the matter. The cumulative burden in dealing with these requests is disproportionate and continuing to process such requests would cause a disproportionate or unjustified level of disruption, irritation and distress to the council and its staff.

It is also reasonably considered by the council, that bearing in mind previous experience of dealing with the requestor and the belief that this subject has become a personal point of contention for her, continuing to engage will simply result in further requests and/or complaints being received."

27. It provided the Commissioner with copies of correspondence it had had with the complainant, and a table of what it described as 20 FOIA requests it had received from the complainant between September and December 2020.

The Commissioner's view

28. In the Commissioner's view, regulation 12(4)(b) of the EIR enables public authorities to refuse requests on the grounds they are vexatious and have the potential to impose a disproportionate or unjustified level of burden, disruption, irritation or distress. Balancing the purpose and value of a request against its impact can help to determine whether the effect on the public authority would be disproportionate.
29. The Commissioner's guidance considers that the key question a public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
30. When considering this issue, the Upper Tribunal in Dransfield asked itself: "Does the request have a value or serious purpose in terms of there being an objective public interest in the information sought?" (paragraph 38).
31. In his guidance, the Commissioner recognises:

"The public interest can encompass a wide range of values and principles relating to what is in the best interests of society, including, but not limited to:

- holding public authorities to account for their performance;

- understanding their decisions;
 - transparency; and
 - ensuring justice.”
32. The complainant has asked for copies of communications between councillors and staff regarding questions she had previously asked the named councillor about the reduced green bin collections.
33. While the Commissioner understands that the complainant has concerns about the information she was given by the Council regarding its decision to temporarily reduce green bin collections during the pandemic, it is not clear to him in what way disclosure of the information requested here would further address those concerns; the complainant has already been given a detailed account of the reasons for the bin collection changes and a timeline of the decisions.
34. The Commissioner has also considered what public good would come from the disclosure of the requested information. The complainant apparently wants to scrutinise for herself correspondence between various parties. While openness and transparency are themselves likely to increase public confidence in a public authority, the Council has already twice considered the complaint to which the correspondence relates. If the complainant considers there has been institutional weakness or wrongdoing, she may complain to the Local Government Ombudsman. Using access rights provided by the EIR, when a formal complaint channel is available, is not an appropriate use of the EIR.
35. The Commissioner further notes that the requested information relates to the complainant’s personal dealings with the Council. As such, its disclosure is unlikely to be of significant benefit, or interest, to the wider public.
36. Seen in that context, the request does appear to the Commissioner to be an attempt to use the EIR to reopen a matter which has twice been thoroughly considered under the Council’s formal complaints procedures. The complainant’s approach for information in this case would therefore appear to have the effect of disrupting its work for no justifiable gain.
37. The Commissioner also notes that disclosing the requested information would be unlikely to have value in terms of resolving the complainant’s underlying concerns, given that she has twice had her formal complaints considered and dismissed, yet persists in pursuing the same matters with the Council.

38. The Commissioner therefore finds there to be little objective public interest in the information being disclosed and that the purpose and value of the request is limited.
39. Having reached this view, the issue for the Commissioner to determine is whether complying with the request would impose a grossly oppressive burden on the Council which outweighs its limited value and purpose.

The negative impacts of the request

40. As in many cases which give rise to the question of whether a request is manifestly unreasonable, the evidence in this case shows a history of previous engagement between the parties. The Council considers that the particular context and history of this engagement strengthens its position that, at the time of the request, it was manifestly unreasonable. The Council's arguments referred to the cumulative burden of dealing with previous approaches for information on related subjects, combined with the burden imposed by this request, and the likelihood of further requests.
41. In other words, the burden in this matter arises from the resources and staff time that it has already spent on dealing with the complainant's correspondence and the likelihood that this pattern of behaviour will continue. The Council considers it unreasonable to have to expend further resources on dealing with a request when it considers the central issue from which it stems, closed. It presumably considers that the public interest in disclosure is sufficiently low to outweigh the oppressive burden that it claims compliance would cause to its resources.
42. The Commissioner has considered the Council's representations about the impact of dealing with this request, in light of the estimated 60 hours it has already spent on dealing with the complainant's formal complaints. The requested information relates directly to the matters which were the subject of those complaints.
43. Although it said that compliance would be burdensome, the Council has not described in detail the impact on it of allocating more resources to deal with this request, nor has it said what work would be involved in locating, reviewing and communicating the information. Nevertheless, the Council has demonstrated that it has already spent a considerable amount of time and resources on addressing the complainant's concerns, and responding to other requests on this subject and, that by responding to this request, it is being asked to spend further time on them. In view of the fact that the information being requested relates directly to those complaints, the Commissioner considers it was reasonable for the Council to take account of the 60 hours it had already

spent dealing with the matter, when determining that the request was burdensome.

44. Compliance with this request would involve some degree of work – namely searching for all the correspondence described in the request and then determining whether any or all of it was unsuitable for disclosure. Any individuals identified in the correspondence would also need to be consulted regarding whether they object to their names being disclosed.
45. Under FOIA, the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') specify an upper limit for the amount of work required beyond which a public authority is not obliged to comply with a request. This is set at £450 for public authorities such as the Council. This translates into an upper limit of 18 hours work.
46. While the Fees Regulations relate specifically to FOIA, the Commissioner considers that they provide a useful point of reference where the reason for citing regulation 12(4)(b) of the EIR is the time and costs that compliance with a request would expend. Clearly the work already undertaken by the Council on matters which directly relate to the request readily exceeds 18 hours.
47. Whilst the Council must expect to have to allocate some resources to responding to requests for information under the EIR, having considered all of the above, the Commissioner considers that compliance with this request, when considered against the 60 hours work already incurred, would impose a burden on the Council which runs the risk of impacting on other service provision and business areas.

Balancing the value of the request against those negative impacts

48. In reaching a decision in this case, the Commissioner has balanced the limited purpose and value of the request against the detrimental impact on the Council, of complying with it.
49. The complainant presumably believes it was a reasonable request, in view of the fact she remains dissatisfied with the outcome of the complaints she has submitted. In contrast, the Council has characterised the request as a means to pursue a personal grievance about a matter which has been formally considered and dealt with, and believes that it is unreasonable.
50. The purpose of regulation 12(4)(b) of the EIR is to protect public authorities and their employees in their everyday business. In his guidance, the Commissioner recognises that dealing with unreasonable requests can strain resources and get in the way of delivering

mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.

51. In this case, when balancing whether the limited objective public interest the Commissioner has identified can justify the negative impact of complying with the request, the Commissioner has paid particular attention to the following:

- the limited purpose and value of the request (ie, that the complainant's underlying concerns have already been considered under the complaints process, and detailed information about the bin collection decision have been disclosed to her during that complaint process);
- the complainant can progress any remaining concerns she has through formal complaint channels, via the Local Government Ombudsman; and
- the time the Council has spent dealing with closely related matters has significantly exceeded what would be permissible under the Fees Regulations.

52. Having considered the above factors, the Commissioner is not satisfied that the limited purpose and value of the request is sufficient to justify the detrimental effect to the Council of dealing with it. The Commissioner is therefore satisfied that the request is manifestly unreasonable and that regulation 12(4)(b) of the EIR is engaged.

Public interest

53. Regulation 12(4)(b) is subject to a public interest test. The Commissioner must decide whether the balance of the public interest favours complying with the request or maintaining the exception.

Public interest arguments favouring disclosure

54. The Council identified the following public interest in disclosure:

"There is some public interest in disclosure to promote transparency, accountability and greater public awareness of any actions and decisions taken by the local authority in relation to environmental matters. Disclosing environmental information will also promote a free exchange of views and more effective public participation in environmental decision making, all of which ultimately contribute to a better environment which is of a high interest to the public."

55. The complainant did not offer any arguments as to why the public interest favoured disclosure.

56. The Commissioner recognises the general public interest in the Council being open and transparent regarding decision-making and the spending of public money, particularly in relation to service provision during the pandemic.

Public interest arguments favouring maintaining the exception

57. The Council identified the following public interest in maintaining the exception:

“There is a substantial public interest in ensuring that the local authority manages its already limited resources as effectively and efficiently as possible. Complying with the request would place a disproportionate burden on those resources, mainly officer time. A diversion of such considerable resources to an information request would not be in the public’s best interest as the relevant council service areas who hold the requested information are responsible for maintaining other core public services, including but not limited to Legal Services, Finance, Democratic and Information Governance. This would not be conducive to the efficient running of a public service.

As previously referenced, the request is highly personalised and is regarding the outcome of an investigation in which the requestor’s complaint was not upheld. The council do not fundamentally believe that the request demonstrates appropriate use of the EIR and has little to no benefit to the wider public.”

58. The Commissioner’s published guidance on regulation 12(4)(b) says that many of the issues relevant to the public interest test will have already been considered when deciding if this exception is engaged. This is because engaging the exception includes some consideration of the proportionality and value of the request.
59. The Commissioner considers that public authorities must be able to protect themselves and their resources from requests which are manifestly unreasonable and it is in the wider public interest for them to do so.

Balance of the public interest

60. Since the Commissioner is satisfied that the exception at regulation 12(4)(b) is engaged, it follows that he accepts that the request is manifestly unreasonable. The question is whether the public interest in maintaining the exception is strong enough to outweigh the public interest in disclosure.
61. The Commissioner has carefully considered the public interest arguments on both sides. The Commissioner accepts that compliance

with the request would impose an unjustified burden on the Council, for the reasons set out above. There is a considerable public interest in protecting public authorities from burdensome requests, where the value of the requested information does not justify the work required to comply with the request. While the complainant has concerns about the Council's decisions regarding for garden waste collections during the pandemic, her concerns have been formally considered, and not upheld. She has been informed that she may complain to the Local Government Ombudsman if she remains dissatisfied. The Commissioner considers that this satisfies the public interest in transparency to a considerable extent, as it permits external scrutiny of the matter through a formal channel.

62. The Commissioner understands that the complainant is aggrieved about the way the Council has dealt with her, however, he does not consider this to be a strong public interest argument in favour of requiring a public authority to comply with a manifestly unreasonable request. The Commissioner also has concerns about the use of the formal access mechanism provided by the EIR, to reopen matters which the Local Government Ombudsman would seem to be best placed to consider.
63. Weighing up all the above, the Commissioner considers that the public interest in this case lies in ensuring that the Council's resources are used effectively. Since the request asks about matters which have already been considered via its formal complaints process, and the complainant has been informed of further formal channels through which she may continue to pursue her concerns, the Commissioner has decided that there is greater public interest in the Council being able to focus its resources on its core functions, rather than on dealing with a request for information which would be of limited interest or benefit to the wider public.
64. The Commissioner has therefore decided that the balance of the public interest favours maintaining the exception at regulation 12(4)(b) of the EIR. The Council was entitled to rely on that exception to refuse the request.

Regulation 12(2) - Presumption in favour of disclosure

65. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the

regulation 12 exceptions. As stated in the Upper Tribunal decision *Vesco v Information Commissioner (SGIA/44/2019)*³:

"If application of the first two stages has not resulted in disclosure, a public authority should go on to consider the presumption in favour of disclosure..."

and

"... the presumption serves two purposes: (1) to provide the default position in the event that the interests are equally balanced and (2) to inform any decision that may be taken under the regulations" (paragraph 19).

66. As set out above, in this case the Commissioner's view is that the balance of the public interests favours the maintenance of the exception, rather than being equally balanced. This means that the Commissioner's decision, whilst informed by the presumption provided for in regulation 12(2), is that the exception provided by regulation 12(4)(b) was applied correctly.

Regulation 11 – Representations and reconsideration

67. Regulation 11(4) of the EIR provides that where a request for review is received:

"A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the receipt of the representations."

68. The complainant requested an internal review of the Council's decision on 17 June 2021. The Council did not provide the outcome of the review until 53 working days after the complainant requested it, and only following the Commissioner's intervention.
69. The Commissioner has therefore decided that the Council did not comply with the requirements of regulation 11(4) of the EIR.
70. The Commissioner uses intelligence gathered from individual cases to inform his insight and compliance function. This aligns with the goal in

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https://assets.publishing.service.gov.uk/media/5d7a6a2340f0b61d01bba991/SGIA_44_2019.pdf

his draft "Openness by design"⁴ strategy to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting systemic non-compliance, consistent with the approaches set out in his "Regulatory Action Policy"⁵.

Other matters

71. The Commissioner acknowledges that he has upheld the Council's application of regulation 12(4)(b) of the EIR in this case, when he has reached a different conclusion regarding the application of section 14 (Vexatious request) of FOIA, to another request that the complainant recently submitted to the Council⁶. In that case, he found that the Council was not entitled to consider the request vexatious.
72. When dealing with complaints submitted to him, the Commissioner will consider the facts of the particular case presented to him, on a case-by-case basis. The particular circumstances of each request may vary, according to such factors as the applicable access regime (FOIA or the EIR), the time already spent on dealing with similar matters, the wider public interest that would be served by the information being disclosed and the information that has already been provided to the requester. Any, or all, of these factors may lead to a different conclusion as to whether or not, in a particular case, a request may be considered vexatious (under section 14 of FOIA) or manifestly unreasonable (under regulation 12(4)(b) of the EIR).
73. The Commissioner will always consider each complaint he receives on its individual merits.

⁴ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

⁵ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

⁶ Dealt with under reference IC-125224-D8T9

Right of appeal

74. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

75. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

76. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Samantha Bracegirdle
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